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IN THE

Supreme Court of the United States

October term, 1968

No. [redacted] 178

DANIEL PATTON KRAMER,
Petitioner,

v.

THE STATE OF WASHINGTON,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

DANIEL PATTON KRAMER,
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THE STATE OF WASHINGTON,
Respondent.

No. .....

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Washington entered in the above case on December 28, 1967, Appendix A.

OPINIONS BELOW

The judgment and sentence of the Superior Court of Washington for Skagit County was made and entered on July 7, 1966; the Supreme Court of the State of Washington gave its opinion affirming the court below December 28, 1967, printed herein in Appendix B and reported in 72 W.D.2d 892 (1967), and Petition for Rehearing was denied and Remittitur issued February 29, 1968. Order Granting an Extension of Time to file Petition for Certiorari was entered allowing until 5:00 P.M., June 10, to file the Petition.

JURISDICTION

The statutory provision believed to confer on this court jurisdiction to review the decision of the Supreme Court

of Washington is Chapter 646, Laws of 1948, 62 Stat. 929; 28 U.S.C.A. Sec. 1257 (3):

> ". . . Where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . ."

Petitioner is claiming denial of such under Constitution of the United States, Fifth, Sixth and Fourteenth Amendments.

QUESTIONS PRESENTED

1. Did the Snohomish County authorities deprive petitioner of right, privilege and immunity in violation of the United States Constitution, Amendments Fifth, Sixth and Fourteenth when they took him in custody after a human being was killed, questioned him and took a written statement from him without benefit of counsel and without the presence of his only living parent, he being a juvenile of 17 years.

2. Did the Snohomish County Superior Court in Juvenile Proceedings deprive petitioner of right, privilege and immunity under said amendments when it took jurisdiction under authority granted by State Law and failed to hold a hearing for approximately five weeks, while petitioner was held in Northern State Hospital under commitment of Snohomish County Superior Court, in an insanity proceeding with one or less days notice to petitioner's mother, during which time he was capable of a hearing and employed at the hospital, the prosecuting attorney of Snohomish County, who thereafter filed a First Degree Murder Charge, being responsible in both proceedings?

3. Was petitioner denied right, privilege and immunity

under said amendments when a written statement taken from him by a Juvenile Deputy of the Snohomish County Sheriff's Department with another Deputy Sheriff present and other statements made to various police officers were used repeatedly in a later adult murder trial, he at the time of the statements being under 18, his mother in California, his father deceased, being without counsel and never being advised counsel could or would be appointed for him, almost immediately thereafter being placed in the Juvenile Detention home and then the Northern State Hospital, because of his mental and emotional condition?

4. Was petitioner denied right, privilege and immunity under the said amendments to the Constitution of the United States by the Supreme Court of the State of Washington by its opinion, Appendix B hereto; it held that petitioner was not entitled to a Juvenile hearing on relinquishment, as he was held in Northern State Hospital and any other proceeding was stayed, yet the record is silent on any hearing regarding stay of proceeding, petitioner was brought to the insanity hearing without showing of notice to him and petitioner's mother was given one day or less notice, if any at all; it held that statements made while in juvenile custody without a parent or guardian present, his mother in California and his father deceased, or notice to a parent or anyone else, without counsel and without being advised counsel would or could be appointed, (the opinion states otherwise, yet a search of the entire record fails to disclose any such advice; he was advised he could have counsel) the court citing *In re Gault*, 387 U.S. 1, 55, 18 L.Ed.2d 527, 87 Sup. Ct. 1482 (1967); it disregards the ineffective representation

of counsel the written statement received "(without objection)"; it states the homicide was admitted which petitioner believes was not supported by the record.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions under which petitioner claims title, right, privilege and immunity are: the Fifth, Sixth and Fourteenth Amendments, which are printed in Appendix C.

The Statutory provision involved are R.C.W.A. 13.04.-010, 053, 095 and 120, Appendix D.

STATEMENT OF THE CASE

Petitioner was born March 13, 1948, his father was killed by accident when he was young and just prior to the homicide for which he was convicted of second degree murder by a jury in Skagit County, Washington, Superior Court, his mother had gone to San Diego to be married and was away from home in which petitioner was living on February 5, 1966, the date of the killing. On that day petitioner, who was then 17 years of age, was quite frustrated, confused, despondent, unable to remember; he thought nobody loved him. He had cried, he had drunk some vodka in the afternoon of the same day, had threatened suicide and had purchased some shells for a dismantled shotgun which was kept in the attic of the upstairs of the house in which he lived. It had no stock and no trigger guard, he having been rebuilding the gun for a period of time.

During the afternoon he had shown signs of emotional disturbance, he had broken a pane of glass in the back

door with his fists injuring his hands, he had told his sister to forget that she had a brother.

Linda True, the older sister with whom Dan was staying in the absence of his mother called Marysville Police Officer, Donald Arndt, who had come to the house and left looking for Dan and returned after Dan had gone upstairs. The officer called to petitioner and said he wanted to talk to him, petitioner answering "Yes." The officer ascended the carpeted stairway, took steps up the stairs and was heard saying "Dan, what are you doing" and then a shot which mortally wounded the officer. Petitioner immediately ran downstairs with the gun in his hand, ran to his high school counselor, Mr. Pavish (St. 163) and told his counselor what had happened. Mr. Pavish said at the trial, "Dan felt it was an accident." The counselor took Dan back to the residence where the killing occurred in his pickup truck, where several police cars and officers from the Marysville Police, the Sheriff's Office and the Washington State Patrol were congregated.

Several statements were taken by various officers during the arrest, handcuffing, transportation to the Sheriff's Office in Everett, Washington, a few miles away, and later interrogation and taking of a confession, all within about an hour and one-half of the shooting. Although many statements were made to Dan regarding constitutional rights, his right against incriminating himself, his right to be represented by counsel, that any statements made could be used against him, no officer at any time advised him he could contact his mother, although it was known his mother was out of town, his father was deceased. At no place in the records is it stated, including

a hearing on confession held June 1, 1966, that any officer advised petitioner that an attorney could be appointed for him. His sister tried to see him the night of the killing and the following day but was unable to contact him or see him while he was in custody of the Snohomish County officers.

Within an hour and one-half of the killing, he gave a four-page written confession (St. 589), taken by Juvenile Officer of the Sheriff's Department, Captain Meyer, in the Juvenile Office with Larry Arrants, another Deputy Sheriff present at the time. Prior to the taking of the statement, the Juvenile Officer made acquaintance with petitioner, claiming to advise petitioner of his rights, getting his confidence by asking him questions like "What the kids call him" "What he would like me to call him, instead of Mr. Kramer," "What day it was," "If he went to school," "What grade he was in at school," and so forth HC (St. 51, 52). A written statement was then taken, which was later admitted at the trial.

The statement shows it was worded not by an infant, but by an officer; in the statement the gun was erroneously named a "Mossberg," whereas it was a J. C. Higgins gun. Captain Meyers testified at the hearing on confession HC (St. 5, 57) that he felt the boy should have somebody present if at all possible before making the statement. Following the taking of the statement, he was taken to Snohomish County Detention Home and later, because of his extreme emotional condition, was taken to Northern State Hospital at the request of the Prosecuting Attorney of Snohomish County. A psychiatrist, Joseph A. Buchmeier, M.D., had a conference with him and reported by letter Sno. Ins. (Tr. ....).

On February 8, 1966, an Application and Order for Immediate Apprehension and Detention Pending Hearing and Examination was filed in Snohomish County, Superior Court in Insanity Proceeding, and A Notice of Hearing was issued the same day setting a hearing in the afternoon of February 9, 1966. By this time, petitioner's mother had returned from California and was given one day, or less, notice of the hearing. Following the hearing, petitioner was kept in Northern State Hospital, five weeks of which he was under eighteen years of age, under Superior Court order. He was discharged later by notification of the Superintendent of the hospital on April 1, 1966, the same day that the Prosecuting Attorney of Snohomish County filed a charge of First Degree Murder against petitioner.

On February 7, 1966, a Complaint Delinquent Child was signed and filed with the Clerk of the Superior Court. No hearing was had whatsoever in the Juvenile Court and apparently no Juvenile supervision of any kind, the only contact known in the record following the taking the petitioner to Northern State Hospital, was when the Chief Juvenile Deputy of the Sheriff's Department took him from Sedro Woolley, Washington, to Everett for hearing on the insanity case. On February 9, 1966, the same day he was brought for the insanity hearing, he was taken first to the Sheriff's Department where he was asked to identify a gun in the absence of the attorney his family had then gotten to represent him.

At the trial of the case, Allan Erich Larson, M.D., an Everett psychiatrist and Director of Northern State Hospital testified he saw petitioner February 6th or 7th, that approximately an hour prior to his arrival, he had a phone

call from the Prosecuting Attorney just asking for an emergency admission, relating that they felt he, petitioner, was in a serious, potential suicide state of mind. The doctor stated (St. 417, 418) "He was quite confused in a state of natural numbness, or shock, that he was coherent, in a very slow and laboring manner, and he was pale and in a state of disbelief."

The doctor testifed after two days the suicide intent was diminished, his ability to think clearly and relate was coming back (St. 419). He stated that petitioner was in Northern State Hospital on a seventy-two-hour emergency basis and after his return to Snohomish County on the third day was there on an extended basis for seven more weeks. He said at first it took thirty or forty seconds before a question got through to him. That petitioner was having a more serious time, more serious than usual problem of adjusting to the changes of adolescense (St. 425). Although he was not insane (St. 429).

In the Hearing on Confession HC (St. 128, 129) the court cited *Harling v. United States,* 295 Fed.2d 161 (1961), as holding that the confession taken by the officers was not admissible in evidence at the adult trial. The statement, as well as other spontaneous statements made to various officers were all admitted at the trial of the action in Skagit County Superior Court during the defense and cross examination of petitioner after he had testified.

Constitutional grounds were raised by Assignments of Error in the Supreme Court Cause No. 39064, Appendix B, claiming violation of Amendment V, VI and XIV of the United States Constitution.

Revised Code of Washington, Chapter 13, set forth in

part in Appendix D, provides that all minor children under the age of eighteen years who are delinquent or dependent are under the Juvenile Court Law. A delinquent child is defined as meaning any child under the age of eighteen years who violates any law of this state or ordinance of any town, city or county, defining a crime. . . .

The state law provides for notice to parent or guardian that the child is taken into custody, the time limitation on the detention and provides in R.C.W.A. 13.04.053 "... No child may be held longer than seventy-two hours after the filing of such a petition unless an order for such continued detention or shelter has been signed by the Juvenile Court Judge. No child shall be detained for longer than thirty days without an order signed by the judge authorizing continued detention. In every order authorizing continued detention, the court shall make and enter its findings upon which continued detention is based." In Washington the Juvenile Court Judge is a Judge or Court Commissioner of the Superior Court of the State of Washington, the highest court in the county. The same Superior Court has jurisdiction over insanity cases.

Even under the present law passed by the State of Washington prior to *In re Gault, supra,* provision was made for notice to parent or guardian for hearing for limitation on detention. The law further provides what the court may do in case after hearing the child is found to be delinquent or dependent, within the meaning of the chapter. The court may commit the child to parents, probation officer, reputable citizen or association, private agency, Department of Public Assistance, or the Depart-

ment of Institutions (of the State of Washington). The latter if the dependency arises from incorrigibility as defined in the Chapter.

The child committed to the Department of Institutions is subject to supervision control thereof, the department has power to parole, to discharge the child from custody, and the court was given the power to rescind the commitment of such child whenever his or her reformation should be deemed complete.

The Juvenile Court did none of the things required for petitioner except to summarily dismiss the Juvenile Court proceeding after petitioner reached eighteen years of age (Tr. 10).

During the same period the same Superior Court did nothing acting as an insanity department of the court. Petitioner had recovered during that time, was eligible for hearing, was capable of a hearing, but was not given a hearing of any kind.

It was the Prosecuting Attorney of the county who sent petitioner to Northern State Hospital prior to any proceeding on an emergency basis, was involved in the insanity proceeding and the Juvenile Court proceeding, who after petitioner reached age eighteen filed an information and later tried him as an adult on a charge of First Degree Murder. The Prosecuting Attorney represents the court in Juvenile proceedings. *In re Lewis*, 51 Wn.2d 193, 316 P.2d 907 (1957). The same prosecutor endorsed the application in the matter of Daniel Patton Kramer, a mentally ill person in Snohomish County Superior Court Cause No. 1964, dated February 8, 1966, showing petitioner at age 17 now in Northern State Hospital, Sedro

Woolley, Washington as being a mentally ill person with the endorsement "I have examined the applicant 'affiant' above-named, have investigated the merits of the application and believe that reasonable grounds exist for the filing of this application." The prosecutor signed the endorsement personally. Skag.(Tr. 12)

As pointed out heretofore, the discharge by the superintendent of Northern State Hospital was the same date as the day the information was filed by the prosecutor. Three days later the Juvenile Court dismissed the procedure without hearing or notice on the only ground that petitioner had reached age 18, and nothing would be gained by further action.

With all this information before it, the Supreme Court of the State of Washington in its opinion, Appendix B, states:

> "Appellant first assigns error to the Juvenile Court's relinquishment of its jurisdiction without affording appellant a hearing on the propriety on its relinquishment (it is our observation and claim that no hearing of any kind on delinquency or relinquishment was ever had under the requirement of the laws of Washington) during his tenure at Northern State Hospital for observation any other proceeding was stayed. At the time appellant was released from his commitment for observation to the Northern State Hospital, he arrived at the age of eighteen years. When a juvenile cause is pending and not heard on its merits prior to the time the juvenile reaches eighteen years of age, the juvenile court loses jurisdiction over the cause." *State v. Ring*, 54 Wn.2d 250, 339 P.2d 461 (1959); see also *In re Lesperance*, 72 W.D. 2d 567, . . . P.2d . . . (1967); *In re Dillenburg v. Maxwell*, 70 W.D.2d 325, 422 P.2d 783 (1967) (Statement) (Ours)

The Supreme Court of the State by its opinion is saying

the Superior Court of the State of Washington acting in both procedures, insanity and juvenile, had no jurisdiction to proceed to a hearing on the ground that during his tenure at Northern State Hospital for observation, any other proceeding was stayed. The record is devoid of any order staying any further proceeding and we cannot believe that the Superior Court, the highest court in the county, had no authority to carry out the laws of Washington relating to its power as a Juvenile Court.

What better engine of injustice could be devised than to allow county officials, through its various institutions, the Superior Court, and a state institution, Northern State Hospital, to deny a hearing to a seventeen-year-old boy who during a period of five weeks became capable of working well six hours a day at Northern State Hospital in the bakery and who was fully able to discuss the facts of the killing with a psychiatrist within one week of the time he was taken to the hospital. Petitioner believes without question the record is clear, that he was put away by the Prosecuting Attorney of Snohomish County, Washington while a juvenile, at least five weeks, until he could be charged as an adult after reaching eighteen years of age in the same Superior Court with the crime of First Degree Murder, and tried as an adult for such crime.

The statements taken while in juvenile custody including the written confession were used to convict him of Second Degree Murder in the adult Superior Court, in Skagit County, Washington, after a change of venue.

The questions presented to this court involve the denial of petitioner's rights, privileges and immunity vio-

lating the United States Constitution Amendments Fifth, Sixth and Fourteenth.

The first question involves the incidents relating to the taking of the confession which later in the Hearing on Confession in Skagit County, Washington, was held to be contrary to the holdings in *Harling v. United States, supra* (St. 128, 129).

The second question involves the same Constitutional Amendments, the same rights of the petitioner denied by a failure of the Snohomish County Superior Court, acting as a Juvenile Court, to hold a hearing for approximately five weeks. The same court by order carried out the prosecutor's request to keep petitioner in Northern State Hospital in an insanity proceeding with no effective notice of hearing to petitioner's mother or petitioner, both proceedings and the First Degree Murder charge and trial being under the supervision and direction of the Prosecuting Attorney of the county.

The third question presented involves the use of the written statement and other statements taken by various officers of Snohomish County, the City of Marysville and the Washington State Patrol while petitioner was under the juvenile jurisdiction of Snohomish County from the moment of his arrest. At the same time he was under eighteen; his mother was out of the state, his father and grandfather were dead, he had no counsel, the record is devoid of any testimony of petitioner or anyone else, including officers of the city, county and state, that he was advised counsel would be appointed or provided for him.

The fourth point involves the decision of the Supreme Court of the State of Washington, Appendix B, denying

the same right, privilege and immunity under the same Amendments to the Constitution of the United States, the Supreme Court, as herein indicated, holding petitioner not entitled to juvenile hearing on relinquishment under the same set of facts as heretofore herein presented to this Honorable Court, the Supreme Court of the United States. The court states in its decision regarding the voluntariness of the statements made that he was advised of his constitutional rights, that he need not make a statement, that he could remain silent, that statements he made could be used aginst him, that he could have counsel appointed and that he could have access to a telephone. The records support all of these except "That he could have counsel appointed." This was one of the main and key questions in *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602 (1966). The record of approximately 1,000 pages including the Hearing on Confession does not show that petitioner was so advised. *In re Gault, supra,* holds that not only the juvenile must be advised, but also his parents or guardian. Yet the Washington Supreme Court cites *In re Gault, supra,* as authority for its holding. Almost immediately after the killing of the police officer, petitioner was placed in Northern State Hospital on an emergency basis. Even were he an adult, the psychiatrist's observations in regard to his mental condition would be a factor to consider in determining of voluntariness. *State v. Allen,* 67 Wn.2d 238, 406 P.2d 950 (1965). The officer who took the confession indicated he felt that *someone should have been with the petitioner when he gave his four-page statement.* The record shows that his sister failed to get to him for a period of almost two days although she sought him at various public offices and

was not able to see him until he was in Northern State Hospital HC (St. 86, 87).

It is petitioner's position that any statements taken while a juvenile may not be used in a subsequent proceeding in a criminal court for a conviction. *Harling v. United States, supra.*

An article in 40 Wash. Law Rev. 189 entitled *"The Juvenile Officer and Self Incrimination"* in 1965 points out the reasons a confession taken by the Juvenile officers or made to police by a juvenile are not reliable later. ". . . The juvenile knows that his hope for leniency lies in being painfully honest and properly contrite. . . ."

The Supreme Court of the State of Washington by its opinion condones the actions of the police officers, the Superior Court, and the Prosecuting Attorney in failing to give petitioner rights as a juvenile and holding him until he could be charged as an adult at the age of eighteen years.

Petitioner was denied his rights as given by United States Constitution Amendment Six, the right to trial by an impartial jury. One of the jurors on *voir dire* stated on being questioned by counsel in answer to the question.

"Q. Do you think you can give this defendant the benefit of the presumption of innocence until proven guilty?

"A. I feel since he is charged with the crime he must have done it."

Counsel for defendant asked that the juror be discharged for cause, this was denied by the trial judge and he was later forced to use one pre-emptory challenges.

The failure to dismiss this juror for cause could have left an imprint in the minds of all jurors because of the answer she gave VC (St. 6A-34, 35, 97). The Supreme Court did not answer this. All jurors were asked about the death penalty, and several released for cause who wouldn't impose it.

Has petitioner been prejudiced by the actions of the officials of the state, county and city? Had there been a hearing of petitioner as a juvenile, he could very well have been treated as a juvenile with the State Department of Institutions or some parole officer or other officers, having supervision over him until he was twenty-one years of age, the age of majority in the State of Washington. Petitioner on reformation could have been discharged from custody prior to reaching age twenty-one. Petitioner would have had no criminal record, would not be deprived of his rights as a citizen of the United States or the State of Washington, would not have a record of conviction, which he will face the rest of his life, nor would he be incarcerated in a state penal institution, where he is now serving a seven-year term. The state had all authority over him, had the court decided he was a delinquent child and should be placed under proper supervision. Had there been a hearing on relinquishment of jurisdiction of the juvenile court while petitioner was under the age of eighteen no pure retrospect could determine what the court would have done, for the matter was never brought before the court. The court never exercised discretion at a hearing in the matter involving petitioner.

WHY CERTIORARI IN THIS MATTER SHOULD BE GRANTED

1. Petitioner was denied title, right, privilege and immunity specially set up and claimed under the Constitution of the United States under said Amendments.

2. The matter should be determined as to whether or not the recent *Gault, supra,* case applies to petitioner. Petitioner believes that he was denied all rights set forth in the *Gault* case, the right to counsel, the right to confertation, privilege against self incrimination, the right of cross-examination and the right of appellate review and transcript of proceedings. *There was no hearing at all granted petitioner which completely violates the safeguards set forth* In re Gault, supra.

3. The treatment of petitioner as a juvenile violates the provisions of *Harling v. United States, supra,* and *Kent v. United States,* 383 U.S. 541, 86 S.Ct. 1045 (1966), and *Pee v. United States,* 107 U.S. App. B.C. 47, 274 S.2d 506 (1959).

4. The decision of the Supreme Court of the State of Washington is inconsistent with its recent prior decision, *Dillenburg v. Maxwell, supra;* and its later decision *In re Lesperance, supra,* although it cites both cases in its decision for the following rule: "When a juvenile cause is pending and not heard on its merits prior to the time the juvenile reaches eighteen years of age, the juvenile court loses jurisdiction over the cause." Yet, contrary to its opinion in petitioner's appeal, the Supreme Court of the State of Washington in both of these cases *did not approve improper or faulty juvenile procedures.*

The *Lesperance* case dismissed the juvenile proceeding, the *Dillenburg case* remanded for a hearing de novo as to propriety of the original transfer of petitioner's case from juvenile court; a new trial if over age eighteen. The constitutional safeguards of *In re Gault, supra,* were affirmed in the *Lesperance* case.

The Supreme Court pointed out *ineffective assistance of counsel* when it found the written statement (St. 589) was admitted and read to the jury (without objection); yet the court overlooked petitioner's claim he had ineffective assistance of counsel.

Petitioner must state that he does not agree with the Supreme Court of the State in its holding that the homicide was ever admitted. He believes such would have to be based on the inadmissible statements.

CONCLUSION

Petitioner respectfully petitions this Court to grant a Writ of Certiorari in this matter to the Supreme Court of the State of Washington and that he be granted an appeal in this court.

JOHN A. KENDRICK
Counsel for Petitioner
W. DELMORE MCDOWELL
of Counsel

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SKAGIT

THE STATE OF WASHINGTON, *Plaintiff,* v. DANIEL PATTON KRAMER, *Defendant.*	No. 2424 Judgment and Sentence (Commitment)

On the 7th day of July, 1966, came Richard Cole, Deputy Prosecuting Attorney, and the defendant, Daniel Patton Kramer, was brought before the Court with his counsel, Samuel P. Hale, it appearing of record that the defendant was convicted by verdict of a jury on the 11th day of June, 1966, of the crime of murder in the second degree.

And it appearing from the verdict of guilty that the defendant is guilty of the crime of murder in the second degree as charged, and the defendant having been asked by the Court if he had any legal cause why judgment and sentence of the Court should not be pronounced, and no legal cause being shown, Now Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant is guilty of the crime of murder in the second degree and pursuant to the mandatory provisions of the statutes of the State of Washington that the defendant be punished therefor by imprisonment in such Correctional Institution under the supervision of the Department of Institutions as shall be designated by the

Director of Institutions pursuant to R.C.W. 72.13.120 for the maximum term of Twenty years, with a recommended minimum of Ten years, in the light of facts presently known to the court, such to be finally fixed by the Board of Prison Terms and Paroles after investigation as provided by law; and the defendant is hereby remanded to the custody of the Sheriff of Snohomish County, State of Washington, to be by him detained and delivered into the custody of the proper officers for transportation to the Washington Corrections Center at Shelton, Washington, in Mason County, all as provided by law.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendant pay the costs of this action.

Done in the presence of the defendant in open Court this 7th day of July, 1966.

A. H. WARD
Judge of the Above-entitled Court

Presented by:
RICHARD COLE
Deputy Prosecuting Attorney
Copy received and approved for entry this 7th day of July, 1966.
Attorney for Defendant

The State of Washington to the Sheriff of the County of Snohomish, State of Washington, and to the Director of Institutions and the Superintendent of the Washington Corrections Center of the State of Washington, GREETING:

WHEREAS Daniel Patton Kramer has been duly convicted of the crime of murder in the second degree as charged in the information filed in the Superior court of the State of Washington, in and for the County of Snohomish and judgment has been pronounced against him that he be punished therefor by imprisonment in such correctional institution under the supervision of the Department of Institutions as shall be designated by the Director of Institutions pursuant to R.C.W. 72.13.120, for the maximum term of twenty years, with a recommended minimum of ten years all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part hereof, Now THEREFORE,

THIS IS TO COMMAND YOU, the said sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification and placement in such correctional facilities under the supervision of the Department of Institutions as shall be designated by the Director of Institutions.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable A. H. Ward, Judge of the said Superior Court and the seal thereof, this 7th day of July, 1966.

ARTHUR ELIASON
As Clerk of said Court
By BEVERLY WHITSELL
Deputy Clerk

COUNTY OF SKAGIT
STATE OF WASHINGTON

I, ARTHUR ELIASON, as County Clerk for the County of Skagit, State of Washington, and ex-officio Clerk of the above-entitled Court, do hereby certify that the foregoing is a full, true and correct copy of the judgment, sentence and commitment in the above-entitled action, now of record in this office.

WITNESS my hand and the seal of the above-entitled Court, affixed this 7th day of July, 1966.

ARTHUR ELIASON
As Clerk for said County and Court
By BEVERLY WHITSELL
Deputy Clerk

APPENDIX B

(No. 39064. Department One. December 28, 1967.)

THE STATE OF WASHINGTON, *Respondent*, v. DANIEL PATTON KRAMER, *Appellant*.*

(1) Infants—Juvenile Court Proceeding—Obtaining Majority While Cause is Pending. When a juvenile cause is pending and not heard on its merits prior to the time the juvenile reaches 18 years of age, the juvenile court loses jurisdiction over the cause, obviating any necessity for a hearing relating to relinquishment of jurisdiction.

(2) Criminal Law—Evidence—Statement Made in Juvenile Proceedings—Waiver of Objection. Although a statement taken by police officers from a juvenile while juvenile proceedings are pending may not be introduced into evidence in the prosecution's case in chief in a later adult criminal proceeding, the defendant waives any right to object to the use of the statement in subsequent criminal proceedings on cross-examination, if it has been found to be voluntary, and he testifies on direct examination with regard to the substance of the statement and the circumstances surrounding its taking.

(3) Same — Confessions — Hearing — Review The Supreme Court will not blindly and conclusively accept findings of fact of the trial court arising out of a hearing on the voluntariness of a confession, though it will attach significant weight thereto. Where Basic constitutional rights are concerned, the court must carefully review the record to determine whether the bounds of due process requirements have been exceeded.

((1), (2) and (3) Reporter's Headnotes)

Appeal from a judgment of the Superior Court for Skagit County, No. 2424, A. H. Ward, J., entered July 7, 1966. *Affirmed.*

Prosecution for murder. Defendant appeals from a conviction and sentence.

W. Delmore McDowell, for appellant (appointed counsel for appeal). .

Robert E. Schillberg, Bruce E. Jones, and *Allen J. Hendricks*, for respondent.

OTT J.* — February 7, 1966, Daniel Patton Kramer (being then nearly 18 years of age), was charged as a delinquent child in the Juvenile Court for Snohomish County with the homicide of Officer Donald Arndt of the Marysville Police Department on February 5, 1966. Daniel Patton Kramer, after the homicide, fled from his home where the act had been committed, to the residence of his high school counselor. He told his counselor of the homicide and that it was accidental. They returned to Daniel Patton Kramer's home whereupon he was arrested. He was then told that he need not make any statements, that he had a right to have a lawyer represent him, and if he made a statement it could be used against him. Daniel Patton Kramer stated that he understood these rights. At the sheriff's office, after talking with the officers for some time, he signed a document in which he stated, *inter alia*, that he had accidentally shot Officer Arndt. He was not then represented by an attorney, and his only living parent, his mother, was in California. After the statement was signed he was taken to the juvenile detention center.

February 8, 1966, an application for Kramer's involuntary commitment to Northern State Hospital for the mentally ill was filed in the superior court. A warrant to forthwith apprehend him was issued. February 9, 1966, a hear-

* Judge Ott is serving as a judge pro tempore of the Supreme Court pursuant Art. 4, §2(a) (amendment 38), state constitution.

ing was had on the commitment petition and an order was entered committing Daniel Patton Kramer to Northern State Hospital for detention and observation "for the purpose of obtaining testimony as to the alleged mentally ill person's condition and treatment . . . and the said Daniel Patton Kramer is committed thereto, for a period not exceeding sixty (60) days for such detention."

April 1, 1966, the superintendent of Northern State Hospital executed an "Official Notice" directed to Daniel Patton Kramer's mother as follows:

> NORTHERN STATE HOSPITAL, Sedro Woolley, Wash.
> Office of the Superintendent April 1, 1966
>
> This is to inform you of the discharge from Court Order Observation (without psychosis) on April 1, 1966, of Daniel P. Kramer #425508 (Returned to Sheriff, Snohomish County) who was admitted February 6, 1966, by an order of the Superior Court of Snohomish #1964 County.
>
> Mrs. Virginia Peterson (Mother)
> 1631-3rd Street
> Marysville, Washington
>
> Very truly yours,
> /s/ William D. Voorhees, Jr.
> Superintendent.

On April 1, 1966, 18 days after Daniel Patton Kramer's 18th birthday, the Snohomish County prosecuting attorney filed an information in the superior court charging him with murder in the first degree. Daniel Patton Kramer entered a plea of not guilty and a special plea that he was not guilty by virtue of temporary insanity and mental irresponsibility at the time of the homicide, but that he had since recovered. (The latter plea was withdrawn at the time of trial.)

April 4, 1966, the juvenile court proceedings were dismissed. The court's order read in part: "It now appearing to the Court that the said child has become eighteen years of age on March 13, 1966, and that no useful purpose would be served by bringing said child into Juvenile Court for Snohomish County."

April 13, 1966, the Superior Court entered an order granting the defendant's request for a change of venue for trial. The cause was ordered transferred to the Superior Court for Skagit County.

June 1, 1966, pursuant to Rule of Pleading, Practice and Procedure 101.20 W, a hearing was had on the question of the voluntariness of Kramer's written statement. The court, after analyzing the testimony of each witness, held that the statement was voluntarily made by Daniel Patton Kramer after he had been fully advised of his constitutional rights. the court ruled the statement was, nevertheless, inadmissible because of *Harling v. United States*, 295 F.2d 161 (DC. Cir. 1961). June 6, 1966, the cause was tried to a jury which returned a verdict of "guilty of the crime of Murder in the Second Degree, . . ." From the entry of judgment and sentence based upon the jury verdict, Daniel Patton Kramer has appealed. The attorney who represented him from February 8, 1966, through the trial of the cause does not represent him on appeal.

[1] Appellant first assigns error to the juvenile court's relinquishment of its jurisdiction without affording appellant a hearing on the propriety of its relinquishment. During his tenure at Northern State Hospital for observation any other pending proceeding was stayed. At the

time appellant was released from his commitment for observation to Northern State Hospital he had arrived at the age of 18 years. When a juvenile cause is pending and not heard on its merits prior to the time the juvenile reaches 18 years of age, the juvenile court loses jurisdiction over the cause. *State v. Ring*, 54 Wn.2d 250, 339 P.2d 461 (1959); see also *In re Lesperance*, 72 W.D.2d 567, ... P.2d..... (1967); *In re Dillenburg v. Maxwell*, 70 W.D.2d 325, 422 P.2d 783 (1967).

Appellant next assigns error to the trial of the cause on its merits in the adult court while the mental illness inquiry was pending. Daniel Patton Kramer was committed for observation and examination. The order of release (without psychosis) executed by the superintendent of Northern State Hospital terminated the hospital's examination and observation. After Daniel Patton Kramer was released by the superintendent of the hospital to the custody of the sheriff there was no pending mental illness proceeding. The information was thereafter filed. We find no merit in this assignment of error.

Appellant next asserts that the trial court erred in permitting the appellant's signed statement to be used for purposes of impeaching appellant's testimony and to be thereafter admitted as an exhibit and read to the jury. At the pretrial hearing on June 1, 1966, the trial court found that the statements made by appellant to the officers were voluntary and were made after appellant had been advised of and had understood his constitutional rights. The trial court at that time, applying the rule of *Harling v. United States, supra*, held the confession was not admissible in this adult criminal proceeding because

the written statement was taken by the officers while the juvenile proceeding was pending and the accused was subject to the jurisdiction of the juvenile court.

When the appellant became a witness in his own behalf in the adult trial, on direct examination, he testified to the fact that he had signed a statement that the shooting had been accidental. He testified in this regard as follows:

"Q. After you got to the Snohomish County Sheriff's Office, what happened?

"A. They took me into the room and they said that they were going to take some statements from me and they proceeded to take the statements.

"Q. What did they ask you when they got up in that room?

"A. They asked me to tell them what had happened. They asked me questions, oh, I don't remember the exact questions. I had one purpose in mind, and that was to convey to them that it was an accident. A lot of it I didn't remember. My mind, it just wasn't working right. It just—

"Q. All right. What did they ask you about what happened upstairs, how did they put it to you?

"A. They asked me questions such as I had a gun, what was I going to do with it, things like that.

"Q. All right right. What did you tell them?

"A. I told them that—oh, I don't think I told them—The statements are not clear, and the only thing I can remember about the whole thing, is trying to make them know it was an accident.

"Q. Did you say anything more specifically, in that effort?

"A. I told them that I felt that they needed an explanation, because the things I didn't know or couldn't remember which was then most of it; there were

spots I could remember, but it was jumbled. I felt that they needed an explanation. . . .

"Q. Go on with your explanation you told that night.

"A. I knew they wanted an explanation as to what had happened, and I wasn't sure what had happened. I wanted to be helpful as much as possible, because I felt they would be working for my good. So that I told them—I was, you see I didn't know why I picked up the gun, and I told them I picked it up to scare him with this, because I had no reason, or knew why I picked it up because I didn't even know who he was. I just felt that they needed the explanation.

"Q. O.K. Did they ask you anything about drinking, or do you remember?

"A. I don't remember.

"Q. Do you remember the date they asked you to write the statement, or did they write it, at the time.

"A. No, they wrote it.

"Q. Well then, did you check it over and sign it, or something?

"A. They told me to read it, and I read it, and they told me to sign it and I signed it."

On cross-examination the prosecuting attorney questioned appellant as to other relevant statements in the written document, some of which the appellant denied were contained therein. The written statement was admitted into evidence and read to the jury (without objection). Appellant contends that the rule announced in *Harling, supra,* forbids its use for all purposes. We do not agree. It was held in *Harling* that a statement taken by the officers from a juvenile while juvenile proceedings were pending, could not be introduced into evidence in the prosecution's case in chief in an adult criminal proceed-

ing after the juvenile court had relinquished its jurisdiction thereto. The rationale of the opinion was predicated upon principles of fundamental fairness which operate to make such statements inadmissible in a later adult proceeding. The court said in the *Harling* case, *supra*, at 163:

> It would offend these principles to allow admissions made by the child in the non-criminal and non-punitive setting of juvenile proceedings to be used later for the purpose of securing his criminal conviction and punishment. Such a practice would be tantamount to a breach of faith with the child, since he cannot be charged with knowledge of either his privilege against self-incrimination of the Juvenile Court's power to waive its jurisdiction and subject him to criminal penalties. (Footnote omitted.)

[2] In *Riddick v. United States*, 326 F.2d 650, 652 (D.C. Cir. 1963), the same United States Court of Appeals for the District of Columbia, interpreting its *Harling* decision as it related to a circumstance similar to the one at bar said:

> We are asked to reverse this conviction because of the prejudice to appellant resulting from the admission of appellant's conversation with the police officer at the time of arrest. But it was the defense who first sought to get these conversations into evidence. . . .
>
> In *Harling* we recognized that there are limitations upon the use by the prosecution of admissions obtained from a juvenile by interrogation during police detention prior to waiver of jurisdiction by the Juvenile Court. But we do not read *Harling*, even if it be applicable to the circumstances here involved, as prohibiting the defense from using, or inviting the use, of conversations with the police, which it believes may be helpful in establishing innocence. If its expectations in this regard are not realized, that

> is surely no ground for reversing the personally disappointing result of conviction.

In the case at bar, as in *Riddick, supra,* at 652, it was the appellant "who first sought to get these conversations into evidence . . . [so as to] give credence to appellant's defense." The *Riddick* rationale is also the rule in this jurisdiction. In *State v. Burgess,* 71 W.D.2d 604, 606, 430 P.2d 185 (1967), we said:

> When a defendant in a criminal proceedings refers to a prior written statement on his direct examination, which statement has been found to be voluntary, he thereby waives any right to object to the use of the statement by the prosecution during cross-examination.

And in *State v. West,* 70 W.D.2d 725, 728-29, 424 P.2d 1014 (1967), we said:

> Where one party has introduced part of a conversation the opposing party is entitled to introduce the balance thereof in order to explain, modify or rebut the evidence already introduced insofar as it relates to the same subject matter and is relevant to the issue involved. This is true though the evidence might have been inadmissible in the first place. 22A C.J.S. *Criminal Law* §660(c) at 655.

[3] The trial court, in the pretrial hearing noted above, found from the evidence that appellant's statements were voluntarily made. This finding by the trial court upon appellate review is subject to the following rule this court announced in *State v. Hoffman,* 64 Wn.2d 445, 451, 392 P.2d 237 (1964):

> [A]lthough we will and do attach significant weight to findings of fact upon disputed issues arising under Rule 101.20W, *supra,* we cannot blindly and conclusively accept such as indisputably establishing the

> pertinent facts. It is our duty and obligation, where basic constitutional rights are involved, to carefully review the record brought before us and determine therefrom whether the bounds of due process requirements have been exceeded. *Haynes v. Washington, supra* [373 U.S. 503, 10 L.Ed.2d 513, 83 Sup. Ct. 1336 (1963)]; *State v. Rutherford,* 63 Wn.2d 949, 389 P.2d 895.

Our review of the facts establishes that appellant was nearly 18 years old; that he held several odd jobs; that he was a senior in high school; that he was advised of his constitutional rights that he need not make a statement, that he could remain silent, that statements he made could be used against him, that he could have counsel appointed, and that he could have access to a telephone. He admitted on direct examination that he had been so advised on three occasions and that he fully understood the import of these rights prior to making his statements to the law enforcement officers. There is no evidence of any overreaching or coercion. Appellant testified that the officers who interrogated him were fair. We agree with the trial court that appellant's statement here in question was voluntarily made. We conclude that it was "not coerced or suggested, . . . [and] was not the product of ignorance . . . adolescent fantasy, fright or despair." (Footnote omitted.) *In re Gault,* 387 U.S. 1, 55, 18 L.Ed.2d 527, 87 Sup. Ct. 1428 (1967).

Finally, appellant contends that the trial court erred in making and entering judgment and sentence of conviction. We have not detailed the events which occurred the night of February 4, 1966; the acquisition of a fifth of vodka; the consumption of a part of it by the appellant a few hours before the homicide on February 5, 1966;

the acquisition of shotgun shells by appellant; the actual loading of the weapon; appellant's pretending to his sister that he intended to commit suicide; appellant's sister telephoning Officer Arndt which led to his coming to appellant's residence; Officer Arndt's ascension of the stairs; his entering appellant's room, and the almost instantaneous firing of the weapon at close range causing his death. We have not detailed the contents of appellant's statement nor the testimony of witnesses. The homicide was admitted. Appellant's sole defense was that he killed Officer Arndt accidentally. There was ample evidence, if believed by the jury, to sustain each and every one of the elements of second degree murder. The court did not err in entering judgment and sentence predicated upon the verdict of the jury.

We have considered appellant's remaining assignments of error and find them to be without merit.

Judgment is affirmed.

FINLEY, C. J., HILL, ROSELLINI, and HALE, JJ., concur.

APPENDIX C
CONSTITUTION OF THE UNITED STATES

Amendment V.

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI.

Jury trial for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV.

1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D

R.C.W.A. 13.04.010—Juvenile court law—Dependent and delinquent children defined—Wards of State

This chapter shall be known as the "Juvenile Court Law" and shall apply to all minor children under the age of eighteen years who are delinquent or dependent; and to any person or persons who are responsible for or contribute to, the delinquency or dependency or such children.

For the purpose of this chapter the words "dependent child" shall mean any child under the age of eighteen years: . . .

The words "delinquent child" mean any child under the age of eighteen years who violates any law of this state, or any ordinance of any town, city, or county of this state defining a crime or who has violated any federal law or law of another state defining a crime, and whose case has been referred to the juvenile court by any jurisdiction whatsoever.

For the purpose of this chapter only, all children who have been adjudicated delinquent and dependent children within the state shall be considered wards of this state and their persons shall be subject to the custody, care, guardianship and control of the court as hereinafter provided.

R.C.W.A. 13.04.053—Notice to parent or guardian that child taken into custody—Time limitation on detention.

Whenever any child is taken into custody, the parent or guardian must be immediately notified. Such requirement may be waived by the court in cases where the parent or guardian cannot be located.

No child shall be held in detention or shelter longer than seventy-two hours excluding Sundays and holidays, unless a petition as provided for in R.C.W. 13.04.060 has been filed. No child may be held longer than seventy-two hours after the filing of such a petition unless an order for such continued detention or shelter had been signed by the juvenile court judge. No child shall be detained for longer than thirty days without an order, signed by the judge, authorizing continued detention. In every order authorizing continued detention the court shall make and enter its findings upon which continued detention is based.

R.C.W.A. 13.04.095 Commitment of child—Order of court—Powers of department of institutions—Order rescinded when reformation complete

When any child shall be found to be delinquent or dependent, within the meaning of this chapter, the court shall make such order for the care, custody, or commitment of the child as the child's welfare in the interest of the state require. Subject to further order, the court may commit the child:

(1) To the care of such child's parents, subject to supervision of the probation officer; or

(2) To the custody of a probation officer, subject to such conditions as the judge may impose; or

(3) To a reputable citizen or association able and willing to receive and care for such child; or

(4) To an appropriate private agency authorized to care for children; or

(5) To the department of public assistance; or

(6) To the department of institutions if the court finds such child to be delinquent, or a dependent child whose dependency arises from incorrigibility as defined by R.C.W. 13.04.010(7)

In no case shall a child be committed beyond the age of twenty-one years. A child committed to the department of institutions shall be subject to the supervision and control thereof and the department shall have the power to parole such child under such conditions as may be prescribed.

The department of institutions shall have the power to discharge such child from custody, and the court shall have the power to rescind the commitment of such child, whenever his or her reformation shall be deemed complete.

The court shall rescind the commitment of any dependent child who was, prior to the effective date of this act, committed to the department of institutions unless such child is incorrigible or delinquent within the meaning of this chapter and the department of institutions shall return the child forthwith to the committing court for such action: Provided, That the Court may commit such dependent child as otherwise provided in this chapter. [Enacted Laws 1961 ch 302 Sec. 6; Amended by Laws 1967 ch 137 §1.]

R.C.W.A. 13.04.120 Arrest of juvenile—Hearing—Traffic violations.

When, in any county where a juvenile court is held, a child under the age of eighteen years is taken into custody by a parole, peace, police or probation officer, such

child shall be taken directly before such court, or placed in the detention home or place under the jurisdiction of such court, or into the custody of the court probation officer; Provided, That if the parent, guardian, custodian or a responsible relative of the child furnishes the officer a signed statement agreeing to produce the child at the next juvenile court session, the child may be released to the signer of the statement. Any such signer who fails, without just cause shown to the court, to produce such child as agreed, shall be guilty of contempt of court and may be punished accordingly.

The court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon petition as hereinbefore provided. In any such case, the court shall require notice to be given and investigation to be made as in other cases under this chapter, and may adjourn the hearing from time to time for such purpose. Pending final disposition of the case the court may make such disposition of the custody of the child as it shall deem for the best welfare of the child. If, upon investigation, it shall appear that a child has been arrested upon the charge of having committed a crime, the court, in its discretion, may order such child to be turned over to the proper officers for trial under the provisions of the criminal code.

Nothing in this section shall be construed as forbidding any peace officer, police officer or probation officer from immediately taking into custody, without process, any child who is found violating any law or ordinance, or who is reasonably relieved to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare, unless immedi-

ate action is taken. In every such case, the officer taking the child into custody shall immediately report the fact to the juvenile court and the case shall then be proceeded with as provided in this chapter: Provided, That whenever a child is arrested for a violation of any law, including municipal ordinances, regulating the operation of vehicles on the public highways, a copy of the traffic citation and a record of the action taken by the juvenile court shall be forwarded by the court to the director of licenses in the same manner as provided in R.C.W. 46.-20.280.

APPENDIX E

THE STATE OF WASHINGTON, *Respondent,* v. DANIEL PATTON KRAMER, *Appellant.*	REMITTITUR No. 39064 SKAGIT COUNTY No. 2424

The State of Washington to: The Superior Court of the State of Washington in and for Skagit County.

This is to certify that the opinion of the Supreme Court of the State of Washington filed on December 28, 1967, became the final judgment of this court in the above entitled case on February 29, 1968. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Three hundred ninety eight and 59/100 dollars ($398.59) in favor of respondent and against appellant. The petition for rehearing was denied by an Order dated February 29, 1968.

WML:dm

cc: Court Reporter
Mr. W. Delmore McDowell
Honorable Robert E. Schillberg, Prosecuting Attorney
Mr. Bruce E. Jones, Deputy
Mr. Allen J. Hendricks, Deputy

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 29th day of February, A.D. 1968.

WILLIAM M. LOWRY
Clerk of the Supreme Court,
State of Washington

72 W.D.2d 892

SUPREME COURT, U. S.

FILED

JUL 10 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 178

DANIEL PATTON KRAMER,
Petitioner,

v.

THE STATE OF WASHINGTON,
Respondent.

BRIEF OF RESPONDENT
IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI

JOHN F. WILSON
Special Deputy as Counsel for Respondent

ROBERT E. SCHILLBERG
Prosecuting Attorney for Snohomish County, Washington, of Counsel

Court House
Everett, Washington 98201

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IN THE

Supreme Court of the United States

October Term, 1968

No. 178

DANIEL PATTON KRAMER,
Petitioner,

v.

THE STATE OF WASHINGTON
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE and ASSOCIATE JUSTICES of the UNITED STATES SUPREME COURT:

The state of Washington contends that pursuant to Rule 19 § 1 of the Revised Rules of the Supreme Court of the United States that a Writ of Certiorari should not be issued as a matter of sound judicial discretion.

First, the hired appeal counsel has cast many asperations upon the conduct of the juvenile and insanity proceedings that were present in this case. He did not

properly present the record of these matters to the State Supreme Court or the United States Supreme Court. Although there was a period of fourteen months from the filing of the notice of appeal to the State Supreme Court and the filing of his brief to the State Supreme Court, the only reason stated to the State Supreme Court was that "Counsel has not yet had opportunity to fully know what transpired . . .[1] There is not even an attempt at a showing of cause, good or bad, sufficient or insufficient, as to why counsel has not presented a record of what transpired. The case is presented here as it was to the State Supreme Court on the basis of substantial quantities of inference.

Second, throughout the petition inferences are made in regards to the competence of the appelant's hired trial counsel. Trial counsel had many years experience, was successful in changing venue of the trial to Skagit County to avoid possible community prejudice and was successful in trial in obtaining a lesser included charge of second degree murder in a trial of first degree murder which would carry the possibility of a death

---

[1]"Counsel has not yet had opportunity to fully know what transpired in the Snohomish County Juvenile and Insanity hearings and anticipates the need of a hearing on Petition for Writ of Habeas Corpus before full knowledge can be gained of all matters effecting the rights of the Appellant. We believe, however, that on the record the Court should remand for a hearing de novo on the question of insanity and juvenile jurisdiction to determine whether Appellant's charge should be dismissed or he be granted a new trial which will guarantee his legal rights under the direction of an opinion of this Court." (Br. 16)

"There should be a remand back to the Superior Court to determine the juvenile and/or insanity case rights or a retrial where essential defenses will be asserted, as soon as possible, or an out and out dismissal." (Br. 43)

sentence. Disagreement between appeal counsel and at least partially successful trial counsel as to strategy does not support an inference of incompetence of trial counsel.

I

THE SNOHOMISH COUNTY SUPERIOR COURT IN JUVENILE COURT AND MENTAL ILLNESS COMMITMENT PROCEDURES DID NOT DEPRIVE APPELANT OF HIS RIGHTS, PRIVILEGES AND IMMUNITIES UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The county officials of Snohomish County and the Superior Court of that county fully complied with all the procedural "due process" safeguards guaranteed appellant when he was committed to a state mental institution pursuant to RCW 71.02.130 and when he was tried as an adult upon his release from that hospital. Such guarantees are fully cognizant when the following facts relating to the petitioner's case are closely analyzed.

The petitioner killed a police officer on Saturday, February 5, 1966. He was taken into custody soon after the shooting and was at that time and several times thereafter fully advised of his rights (HC 113 through 128). The petitioner admitted being so advised (St. 549, 554, 555).

An attorney was hired by the petitioner who performed various acts for him within the first twenty-

four hours, which was on Sunday (St. 411, 412, 419, 494).

Soon after the petitioner was taken into custody it became apparent that he was seriously considering taking his life. A psychiatrist, Dr. Buchmeier, was called in on the day of the crime to examine the petitioner. Due to the petitioner's condition, he was admitted to a state mental institution, Northern State Hospital, on the evening of Sunday, February 6, 1966 (St. 417, 418) for observation and treatment on an emergency basis.

On February 8, 1966, the Prosecuting Attorney for Snohomish County, with the assent of petitioner's trial counsel, signed an application for the involuntary commitment of the petitioner to a state mental institution.[2] Pursuant to this application, an involuntary commitment hearing was held on February 9, 1966. The petitioner's counsel, his sister and his mother had notice of this hearing. Following this hearing, an order was entered on the same date (Sup. Tr. p. 3) ordering the petitioner to be hospitalized at a state hospital for observation as a mentally ill person under RCW 71.02. Petitioner was hospitalized with the cooperation of his privately retained counsel. No objection was made by his counsel and no appeal was taken by his counsel. Appellant's present counsel, through the clear perspective of hindsight, is suggesting a procedure which if the opinion of a highly qualified psychiatrist, Dr. Buchmeier, was correct, would have

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[2]Washington Law, RCW 71.02.090, requires that the prosecuting attorney sign all such applications.

resulted in the death of the defendant prior to trial. The doctor's opinion was that at the time of his examination after the shooting and its effects had been grasped by the appellant that had a serious, immediate suicidal potential. Petitioner's counsel's procedure would have avoided all constitutional arguments other than his right to be alive to stand trial. All of the above is not of record before this Court; if there is doubt as to the accuracy of these statements, this Court is strongly urged to remand for fact finding on this issue to the trial court.

At the entry of this order, the petitioner was in the jurisdiction of the superintendents of one of the state mental institutions, namely, Northern State Hospital.[3] Thus, in accord with Washington Law, the Snohomish County authorities and the Superior Court of that county had relinquished control over the petitioner to the superintendent of Northern State Hospital until it was deemed by that superintendent that he was sufficiently mentally competent to return to the community. The superintendent of Northern State Hospital did release the petitioner from that hospital on April 1, 1966 (Tr. 6).

In light of the above superior court order adjudging that the petitioner be placed in a state mental institution, the respondent asks: What juvenile court hearing or supervision could have been applied while the peti-

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[3]It should be noted that RCW 71.02.240 specified that:

"Where a person is found to be mentally ill the court shall

"(1) Order a person hospitalized at a state hospital until released by the superintendent thereof; or . . ."

tioner was at Northern State Hospital? Furthermore, in light of the defendant's mental condition between the time he killed Officer Arndt and the time of his release from Northern State Hospital, what better way could this situation be handled?

When the petitioner was released from Northern State Hospital by its superintendent, he was then eighteen years old. Washington law provides that the jurisdiction of the juvenile court only applies to persons under the age of eighteen (RCW 13.04.010). At this time an order was entered in Snohomish County Juvenile Court on April 4, 1966, dismissing Cause No. 8376 due to the child having become eighteen years of age (Tr. p. 10). Such an order was in full accord with the present Washington law which provides that:

> "When a juvenile cause is pending and not heard on its merits prior to the time the juvenile reaches 18 years of age, the juvenile court loses jurisdiction over the cause. *State v. Ring*, 54 Wn. 2d 250, 339 P.2d 461 (1959); see also *In Re Lesperance*, 72 W.D. 2d 567, 434 P.2d 602 (1967); *In Re Dillenburg v. Maxwell*, 70 W.D. 2d 325, 422 P.2d 783 (1967)"
>
> (72 W.D. 2d 892, 435 P.2d 970 (1968).)

In light of such order, the adult courts of Snohomish County had jurisdiction to try this action.

Since there is no statement in the United States Constitution or by this Court as to the age a person may be subjected to an adult proceeding rather than to a juvenile one, it would appear that state law would be applicable as to this determination. The procedure

followed in the present case was approved by the Washington State Supreme Court in its decision of this case. Thus, there is no federal question involved.

In the adult proceeding brought against the petitioner, all of the requirements set forth in *In Re Gault*, 387 U.S. 1 (1967) — notice of charges, right to counsel, confrontation, cross-examination, privilege against self-incrimination and right to appeal — were met. Unless the question of which court in a state must assure the rights enunciated by *Gault* reaches constitutional dimensions or unless the question of the cut-off point between adult and juvenile court reaches constitutional dimensions, it is difficult to discover an issue in petitioner's allegation of impropriety in the juvenile proceedings which is justicable on this point.

II

SNOHOMISH COUNTY AUTHORITIES DID NOT DEPRIVE PETITIONER OF RIGHT, PRIVILEGE AND IMMUNITY IN VIOLATION OF THE UNITED STATES CONSTITUTION, AMENDMENTS FIFTH, SIXTH AND FOURTEENTH WHEN A WRITTEN STATEMENT TAKEN FROM HIM WAS USED IN AN ADULT MURDER TRIAL.

The respondent maintains that the petitioner's rights, privileges and immunity were not violated under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution when certain written statements taken from him were used in an adult murder trial for the following three reasons:

A. THE TRIAL COURT WAS NOT GIVEN AN OPPORTUNITY TO RULE UPON THE CONSTITUTIONALITY OF THE ADMISSION OF THE STATEMENTS

No objection or exception or motion to strike was taken at the time of trial to the rebuttal testimony. (See St., beginning at p. 560 through end of rebuttal testimony, except to object to the within statement as not properly identified (St. 579).) Objections or exceptions to the trial of a case, particularly as to constitutional grounds, must be taken at the trial court to become subject to review before the Supreme Court.

> "We (the Supreme Court) shall not consider questions not properly submitted to the trial court, for that court must be given a chance to view and correct the claimed error before the matter can be reviewed by us." *State v. Johnson*, 69 Wn. 2d 264, 273 (October 7, 1966). See also *State v. Miller*, 66 Wn. 2d 535, 403 P.2d 884 (1965).

B. THE TRIAL COURT ADMITTED THESE STATEMENTS INTO EVIDENCE ONLY AFTER THE PETITIONER TESTIFIED THAT HE HAD SIGNED A STATEMENT THAT THE SHOOTING HAD BEEN ACCIDENTAL

The respondent maintains that the following language by the Washington Supreme Court in its decision of this case, 72 W.D. 2d 892, 435 P.2d 970 (1968), clearly sets forth the procedure followed in the admission of the petitioner's statements and the validity of this procedure:

". . . At the pretrial hearing on June 1, 1966, the trial court found that the statements made by appellant to the officers were voluntary and were made after appellant had been advised of and had understood his constitutional rights. The trial court at that time, applying the rule of *Harling v. United States, supra,* held the confession was not admissible in this adult criminal proceeding because the written statement was taken by the officers while the juvenile proceeding was pending and the accused was subject to the jurisdiction of the juvenile court.

". . .

"When the appellant bceame a witness in his own behalf in the adult trial, on direct examination, he testified to the fact that he had signed a statement that the shooting had been accidental . . .

"On cross-examination the prosecuting attorney questioned appellant as to other relevant statements in the written document, some of which the appellant denied were contained therein. The written statement was admitted into evidence and read to the jury (without objection). Appellant contends that the rule announced in *Harling, supra,* forbids its use for all purposes. We do not agree. It was held in *Harling* that a statement taken by the officers from a juvenile while juvenile proceedings were pending, could not be introduced into evidence in the prosecution's case in chief in an adult criminal proceeding after the juvenile court had relinquished its jurisdiction thereto. The rationale of the opinion was predicated upon principles of fundamental fairness which operate to make such statements inadmissible in a later adult proceeding. The court said in the *Harling* case, *supra,* at 163:

> " 'It would offend these principles to allow admissions made by the child in the non-criminal and non-punitive setting of juvenile proceedings to be used later for the purpose of

securing his criminal conviction and punishment. Such a practice would be tantamount to a breach of faith with the child, since he cannot be charged with knowledge of either his privilege against self-incrimination or the Juvenile Court's power to waive its jurisdiction and subject him to criminal penalties. (Footnote omitted.)'

"In *Riddick v. United States*, 326 F. 2d 650, 652 (D.C. Cir. 1963), the same United States Court of Appeals for the District of Columbia, interpreting its *Harling* decision as it related to a circumstance similar to the one at bar said:

" 'We are asked to reverse this conviction because of the prejudice to appellant resulting from the admission of appellant's conversation with the police officer at the time of arrest. But it was the defense who first sought to get these conversations into evidence . . .

" 'In *Harling* we recognized that there are limitations upon the use by the prosecution of admissions obtained from a juvenile by interrogation during police detention prior to waiver of jurisdiction by the Juvenile Court. But we do not read *Harling*, even if it be applicable to the circumstances here involved, as prohibiting the defense from using, or inviting the use, of conversations with the police, which it believes may be helpful in establishing innocence. If its expectations in this regard are not realized, that is surely no ground for reversing the personally disappointing result of conviction.'

"In the case at bar, as in *Riddick, supra*, at 652, it was the appellant 'who first sought to get these conversations into evidence . . . (so as to) give credence to appellant's defense.' The *Riddick* rationale is also the rule in this jurisdiction . . ."

Furthermore, this court in *Walter v. United States*,

347 U.S. 62 (1954), stated that:

> "It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths." (347 U.S. at 65.)

Finally, the respondent maintains that it is even questionable as to whether the rule in *Harling v. United States*, 295 F.2d 161 (USCA D.C. 1961) is still valid authority for excluding the use of a juvenile's statements in the prosecution's case in chief. If the *Harling* case was based on the "non-criminal philosophy" of juvenile courts and the *Gault* case, *supra*, can be said to establish due process requirements and procedural safeguards into juvenile proceedings, the strict insulation doctrine of the *Harling* case is in essence overruled by the United States Supreme Court conclusion in the *Gault* case. This viewpoint appears to be in accord with the President's Commission on Law Enforcement and Administration of Justice in their report, The Challenge of Crime in a Free Society, U.S. Government Printing Office, Washington, D.C. (1967), in which the following is stated with regard to those offenders for whom more vigorous measures seem necessary:

> ". . . the adjudacatory hearing should be consistent with basic principles of due process. Counsel and evidentiary restrictions are among the essential elements of fundamental fairness in juvenile as well as adult criminal courts." (Page 81.)

Thus, in the area of a major crime, the respondents maintain that the same rules of admissibility of evidence and statements should be observed as in any other criminal cause.

C. PETITIONER PROVIDED ALL RIGHTS GUARANTEED HIM IN THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AT THE TIME HE MADE THESE STATEMENTS.

The petitioner apparently concedes in petitioner's brief, page 5, that many statements were made to him regarding his rights — his right against incriminating himself, his right to be represented by counsel, that any statements made could be used against him. In regard to the lack of advice that the Court would appoint counsel for the defendant, it should be noted that even though it was a weekend (non-judicial day), counsel was hired and did perform various acts for the defendant within the first twenty-four hours (St. 411, 412, 419, 494). Thus, it is quite apparent that the petitioner was accorded all of his constitutional rights even though certain written statements were taken from the petitioner at a time prior to this court's rulings in *Miranda v. Arizona*, 384 U.S. 436 (1966). In fact, the trial in the present case commenced on June 6, 1966, which was seven days before the *Miranda* decision was handed down.

Furthermore, the trial court's finding on the confession shows that he could have his parents present, but he made no request to use the phone. (HC 116).

There is no record of the defendant asking for counsel, his family, his sister, or anyone else. In fact, his sister, Linda True, did not attempt to see the defendant until three hours after the petitioner's statement was made (HC 88) and his mother was out of town in San Diego, California, at that time.

Finally, at the pretrial hearing on June 1, 1966, the trial court found that the statements made by the petitioner to the officers were voluntary as a matter of fact (HC 121). The trial court was clearly cognizant of the fact that a Snohomish County Sheriff's Officer wrote the statement himself, and this fact was explained to the jury. The petitioner makes no showing that the fact affected the voluntariness of the statement. Surely a statement signed by the defendant is not rendered involuntary because it is not in the defendant's own handwriting.

Although all of the statements in the present case were made by the petitioner prior to this Court's decision of *In Re Gault, supra*, the Snohomish County authorities appear to have more than adequately complied with the spirit and language of that decision.

III

THE PETITIONER WAS NEITHER PREJUDICED WHEN HIS MOTION TO DISMISS A JUROR FOR CAUSE WAS DENIED BY THE TRIAL JUDGE BECAUSE TRIAL COUNSEL HAD NOT EXERCISED ALL HIS PEREMPTORY CHALLENGES WHEN HE ACCEPTED THE JURY AS IMPANELED, NOR WAS HE DEPRIVED OF HIS RIGHTS,

PRIVILEGES OR IMMUNITIES IN VIOLATION OF THE UNITED STATES CONSTITUTION AMENDMENTS FIFTH, SIXTH AND FOURTEENTH.

At the outset, it should be pointed out that the petitioner's trial counsel used his third peremptory challenge against the juror specified on page 15 of the petitioner's brief (St. 6A, 97). It should be further noted that the defense trial counsel did not exercise his last, that is, the twelfth and last, peremptory challenge (6A-144). The petitioner's trial counsel also accepted an alternate juror who was later put on *voir dire* and no peremptory challenge was used by the defense counsel (6A-149). Thus, the respondent maintains that the total jury in this case was without bias and prejudice. Although the juror in question on *voir dire* did state that, "I feel since he was charged with the crime he must have done it," this lack of bias and prejudice on the part of even this juror is pointed out by the trial court when it asked this juror the following questions:

> "And, the question Mr. Hale wants to know, is will you follow that legal — that part of our legal system that a man at the beginning of the trial is presumed to be innocent and that that presumption of innocence continues with him until the state has produced evidence to prove him guilty beyond a reasonable doubt, do you understand that?" (6A-36)

To this question the juror answered, "Yes, I will." Thus, it is quite apparent that the juror did understand the rule that one charged with a crime is presumed to be innocent until the state proves him guilty beyond a reasonable doubt and this rule was brought home to the other jurors.

The Washington rule clearly is that denial of a motion to dismiss a juror for cause is not prejudicial if all the complaining party's peremptory challenges were not exhausted in the course of the jury selection.[4]

The same rule has been set forth in other jurisdictions. See *Mellinger v. Prudential Ins. Co.*, 322 Mich. 596, 34 NW 2d 450 (1945); *United States v. Chapman*, 158 F.2d at 417 (10th Cir. 1947).

[4]In *State v. Thorp*, 42 Wn. 2d 494, 259 P.2d 482 (1953), the Court stated the following with regard to the need for trial counsel to use all his peremptory challenges before he can claim error for the trial court's retention of a juror:

". . . He must show the use of all of his peremptory challenges or he can show no prejudice arising from the selection and retention of a particular juror to try the cause, and is barred from any claim of error in this regard." (42 Wn. 2d at 500, 256 P. 2d at 486.)

The Washington Court set forth this same rule in *Rich v. Campbell*, 164 Wash. 393, 2 P. 2d 886 (1931) and *State v. Muller*, 114 Wash. 660, 195 Pac. 1047 (1921).

CONCLUSION

The state contends that the records show that appellant had a fundamentally fair trial; that no reason or cause is shown for the lack of a complete record in regard to the juvenile and insanity hearings is shown by appellant, and that as a matter of sound judicial discussion, certiorari should be denied in this case.

Respectfully submitted,

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